

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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**IN RE PHARMACEUTICAL INDUSTRY** ) **MDL No. 1456**  
**AVERAGE WHOLESALE PRICE LITIGATION** ) **Master File No. 01-12257-PBS**  
 ) **Subcategory Case No. 06-11337**  
 )  
 ) **Judge Patti B. Saris**  
**THIS DOCUMENT RELATES TO:** )  
*State of California, ex rel. Ven-A-Care v.* )  
*Abbott Laboratories, Inc., et al.* )  
Case No: 1:03-cv-11226-PBS )  
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**STATUS REPORT- DECEMBER 31, 2009**

The undersigned counsel, on behalf of plaintiff STATE OF CALIFORNIA ("CALIFORNIA") hereby submits the attached Status Report to the Court in accordance with the Court's June 17, 2004 Procedural Order.

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General for the State of California

Dated: December 31, 2009

By: /s/ Nicholas N. Paul  
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**MDL 1456 Status Report**  
**State of California, *ex rel.* Ven-A-Care v. Abbott Laboratories Inc., et al.**  
**Case No.: 1:03-cv-11226-PBS**

**First Amended Complaint in Intervention**

Plaintiffs filed a First Amended Complaint in Intervention (FAC), with redacted exhibits, on August 25, 2005 (No. 1679). Plaintiffs also filed a motion for leave to file unredacted Exhibits under seal (Exhibits A-K and Exhibits M-R to the FAC) (Nos. 1680, 1703), which the Court granted via electronic order.

**Motions to Dismiss**

On January 17, 2006, Defendants filed a Joint Motion to Dismiss Plaintiffs' First Amended Complaint in Intervention (Nos. 2047, 2051).

On March 22, 2007, the Court denied in part and granted in part Defendants' joint motion to dismiss, and denied Abbott's individual motion to dismiss (No. 3948).

**Case Management Order (CMO)**

The Court entered Case Management Order 31 on August 1, 2007 (No. 4586). Case Management Order 35 (No. 5664) was entered on November 4, 2008. Pursuant to the Court's request, on February 20, 2009, the parties filed a Joint Motion for Entry of Proposed Amendment to Case Management Order No. 31. [Docket No. 5920 (1:01-cv-12257); Docket No. 182 (1:06-cv-11337)]. The motion and amended CMO were granted by the Court on March 4, 2009. [Docket No. 5942 (1:01-cv-12257) / Docket No. 186 (1:06-cv-11337)].

The parties filed a Joint Motion to Set Revised Briefing Schedule for Motions for Summary Judgment and Amend CMO 31 on October 16, 2009 [Master File No. 01-12257 Docket No. 6597; Subcategory 06-11337 Docket No. 497], which the Court granted on October 28, 2009.

On April 27, 2009, Plaintiffs and Defendants Schering-Plough Corp. and Warrick Pharmaceuticals Corp. (“Warrick”) filed a Joint Stipulation to Stay Discovery, based on the existence of a proposed settlement in principle between Plaintiffs and Warrick. The proposed stipulation was approved by the Court and entered on April 29, 2009.

On June 26, 2009, the parties in *United States ex rel Ven-A-Care of the Florida Keys, Inc. v. Schering Corporation, et al.*, Civil Action No. 09-CV-10547, and *United States ex rel Ven-A-Care of the Florida Keys, Inc. v. Schering Corporation, et al.*, Civil Action No. 00-10698, filed a Joint Motion for a Scheduling Conference to address issues pertaining to the settlement agreement. The scheduling conference was held on July 24, 2009, at which time the Court ordered further briefing regarding objections raised to the proposed settlement.

The parties filed a Joint Motion for Settlement Approval Between California, Florida, and Relator Ven-A-Care of the Florida Keys on Behalf of Itself and the United States and Schering-Plough, Schering, and Warrick on August 7, 2009. [Master File No. 01-012257 Docket No. 6359; Subcategory 06-11337 Docket No. 354]. On December 11, 2009, the Court held a final settlement hearing and approved the settlement. Pursuant to the settlement agreement, the State of California filed its Motion for Dismissal of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation on December 11, 2009. The Court entered the order of dismissal on December 17, 2009.

### **Alternative Dispute Resolution**

During the February 12, 2009 Status Conference, the Court directed the parties to mediate in April. That two day mediation took place in late April, with negative results.

On June 25, 2009, the parties attended a planning session with Eric Green to address possible renewed mediation efforts. There is presently no mediation scheduled.

## **Pending Matters**

### **Discovery Motions:**

On August 21, 2009, Defendants filed their Motion for an Order Granting Leave to Take Deposition Out of Time, seeking to take the deposition of Thomas Ahrens after the discovery cut-off date of June 15, 2009. [Master File No. 01-012267 Docket No. 6394; Subcategory 06-11337 Docket No. 376]. Also on August 21, 2009, Defendant Sandoz Inc. filed its Motion to Determine the Sufficiency of Plaintiff State of California's Response to Sandoz Inc.'s First Set of Requests for Admission. [Master File No. 01-012267 Docket No. 6392; Subcategory 06-11337 Docket No. 373]. Plaintiff filed its oppositions to Defendants' motions on September 4, 2009 [Master Docket 01-12257 No. 6482 / Subcategory Docket No. 437] [Master Docket 01-12257 No. 6480 / Subcategory Docket 436]. No hearing has been set and no orders have been issued on these motions.

### **Summary Judgment Motions:**

On November 24, 2009, Plaintiffs filed a Motion for Partial Summary Judgment [Master File No. 01-12257 Docket Nos. 6685-6692, 6714-6715; Subcategory 06-11337 Docket Nos. 547-554, 573, 575]. On November 25, 2009, Defendants filed a Joint Motion for Partial Summary Judgment [Master File No. 01-12257 Docket Nos. 6702-6703, 6710; Subcategory 06-11337 Docket Nos. 563-565]. Defendants also filed three individual Motions for Summary Judgment on November 25, 2009. [Master File No. 01-12257 Docket Nos. 6694-6698, 6699, 6700, 6704-6705, 6709, 6707-6708, 6711; Subcategory 06-11337 Docket Nos. 555-559, 560, 562, 565, 567-571].

On December 21, 2009, Plaintiffs filed their opposition to Defendants' joint and individual Motions for Partial Summary Judgment [Master File No. 01-12257 Docket Nos. 6779-6792; Subcategory 06-11337 Docket Nos. 615-628].

Defendants filed their opposition to Plaintiffs' Joint Motion for Partial Summary Judgment on December 21, 2009 [Master File No. 01-12257 Docket Nos. 6794-6780; Subcategory 06-11337 Docket Nos. 630-637].

**Miscellaneous Motion(s):**

Defendants filed a Motion for Remand November 25, 2009. [Master File No. 01-12257 Docket No. 6701; Subcategory 06-11337 Docket No. 561]. Plaintiffs filed their opposition to the motion on December 9, 2009. [Master File No. 01-12257 Docket No. 6749; Subcategory 06-11337 Docket No. 596]. An order has not yet been entered.

## CERTIFICATE OF SERVICE

I, Nicholas N. Paul, hereby certify that on December 31, 2009, I caused a true and correct copy of the foregoing, **Status Report-December 31, 2009**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

*/s/ Nicholas N. Paul*  
NICHOLAS N. PAUL